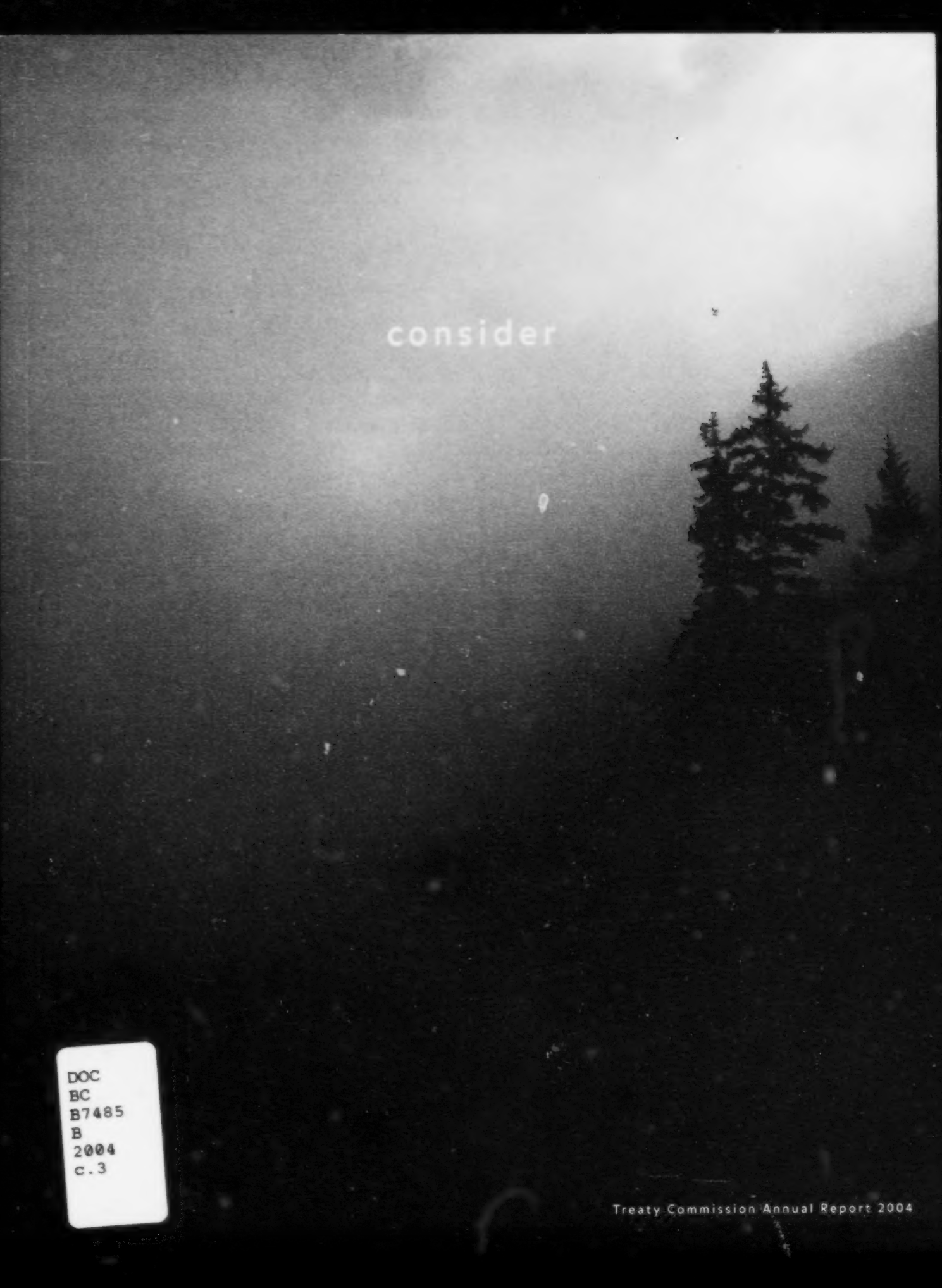

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Treaty Commission Annual Report 2004

...a new relationship

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...As history shows, the relationship between First Nations and the Crown has been a troubled one. This relationship must be cast aside. In its place a new relationship, which recognizes the unique place of aboriginal people and First Nations in Canada must be developed and nurtured.

Recognition and respect for First Nations as self-determining and distinct nations with their own spiritual values, histories, languages, territories, political institutions and ways of life must be the hallmark of this new relationship...

KITLOPE LAKE COVER PHOTO: FRED SEILER

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Commissioner Wilf Adam
First elected April 1995

Commissioner Jack Weisgerber
First appointed March 2002

Commissioner Jody Wilson
Elected March 2003

Commissioner Michael Harcourt
Appointed May 2003

Letter from the Commissioners

Last year we pronounced that treaties were within reach if the parties could clear the remaining, significant hurdles. As the views we have gathered in this report show, that process is underway and the new relationship being sought is beginning to take shape for some First Nations.

Three more agreements in principle have been ratified, bringing the total to four in the past 14 months. Negotiators for the parties hope to reach final agreements early in 2005. The Treaty Commission is committed to assisting these four tables achieve treaties and will support through active facilitation all those tables where the First Nations are ready and committed to moving forward.

We have been without a chief commissioner for the past six months. However, current conditions demand that we continue to act. We have developed a Mission Statement, which will set the tone and direct the actions we will be taking to move treaty negotiations forward. The Mission Statement identifies 10 key recommendations from the BC Claims Task Force as being fundamental to fair and effective negotiations. Of key importance is the need for interim measures as an early form of mutual recognition pending the completion of treaties.

We see it as necessary for the Principals and the Treaty Commission to meet to assess progress and address ongoing concerns about treaty making in British Columbia. It will be an opportunity for the newly appointed federal minister, newly elected First Nations Summit Task Group members and the provincial minister to also address the pressing need for a chief commissioner and to consider our role and mandate in light of the effectiveness review undertaken by the Principals last year.

We owe our special thanks to former chief commissioner Miles Richardson who was an outstanding spokesperson for the treaty process and the Treaty Commission, and a consensus-builder among the parties in treaty negotiations.

We are grateful to our staff for their efforts in maintaining the Treaty Commission's high standard of service in the absence of a full-time chief commissioner.

The British Columbia Treaty Commission was appointed on April 15, 1993 under the terms of an agreement between the Government of Canada, the Government of British Columbia and the First Nations Summit, whose members represent the majority of First Nations in British Columbia.

The terms of the agreement require the Treaty Commission to submit annually to the Parliament of Canada, the Legislative Assembly of British Columbia and the First Nations Summit a report on the progress of negotiations and an evaluation of the process. Our financial information has been prepared to coincide with the release of Annual Report 2004 and is submitted as a separate document.

Wilf Adam
Commissioner

Jack Weisgerber
Commissioner

Jody Wilson
Commissioner

Michael Harcourt
Commissioner

...the current status

Overview

There continue to be conflicting views on how much progress is being made in treaty negotiations.

While it is true that we have never been closer to treaties in British Columbia, it is also true that much of the groundbreaking negotiation is taking place at only a handful of tables.

On the one hand we have seen heartfelt displays of celebration to welcome agreements in principle at the Lheidli T'enneh table in July 2003, followed by the Maa-nulth table in October, and the Sliammon table in December and at the Tsawwassen table in March of this year.

On the other hand we have seen First Nations protesting on the lawns of the legislature in Victoria, citing a continuing denial of aboriginal rights as the reason for their action. At the protest were participants from First Nations in treaty negotiations and those that are not.

Even in Stage 5 negotiations, where there is a substantial amount of momentum and optimism, the participants remain understandably cautious about their prospects for treaties.

We acknowledge there is a greater degree of recognition for First Nations than was the case when the treaty process began. But we cannot ignore the First Nation leaders who are saying that aboriginal rights continue to be denied. A measure of their dissatisfaction is the number of First Nations that are taking court action while still at the treaty table.

An expression of mutual recognition

Underlying all of the Treaty Commission's efforts to see treaties concluded is the undeniable fact that the status of Canada's aboriginal people is unique. There is no changing that historical fact. It is a reality. It is why we have a treaty process in British Columbia.

To be successful, the parties in treaty negotiations must acknowledge the legacy of the past, understand the current situation facing aboriginal people and come to agreement on provisions for the future. The Treaty Commission's duty is to make sure the parties honour their fundamental commitments through this made-in-BC treaty process.

No longer acceptable is the view that aboriginal rights are of minimal importance and have no impact on provincial jurisdiction over lands and resources. Two landmark rulings in the BC Court of Appeal confirm the BC government must properly consult with and accommodate the interests of First Nations before proceeding with development on their traditional territories.

The implication is obvious — First Nations can no longer be ignored. And it is counterproductive to do so.

The courts made it clear that interim approaches, either through the courts or negotiated agreements, can temporarily reconcile competing interests until there is a final reconciliation through a treaty or decision at trial.

The BC treaty process, as it is set out, is fundamentally sound. Through negotiated interim measures agreements, the parties can temporarily reconcile competing interests until there is a treaty. The BC Claims Task Force noted that interim measures are a way of balancing the interests of the parties prior to the completion of treaties and are an early expression of mutual recognition.

The commitments that were made by the governments of Canada, British Columbia and First Nations in establishing the BC treaty process were fair and appropriate for resolving the land title dispute in British Columbia. The treaty is to be a key expression of the new relationship.

Treaty negotiations are a voluntary political process. When First Nations sit down at the treaty table, they must recognize there is legitimacy to the claims of title, of ownership and jurisdiction by Canada and British Columbia.

Similarly, Canada and British Columbia, in coming to the treaty table, must recognize there is legitimacy to the claims of title, land ownership and jurisdiction by First Nations.

The challenge is to give this mutual recognition adequate practical expression in a treaty or through interim measures. At the end of the day, First Nations people must decide if the expression of recognition is sufficient to enable them to regain control over their own lives.

Perhaps as important at this stage of negotiations for many First Nations is receiving a measure of respect and understanding at the treaty table sufficient to establish the basis for a new relationship.

Litigation remains an option

The Treaty Commission has witnessed firsthand the need for a delicate balance between negotiation and litigation.

While it is certainly true that litigation can inform negotiations, at the end of the day a government-to-government relationship, with all of its complexities, must be negotiated. Relationships cannot be built in court. And ultimately, treaty making is about building new relationships.

We have been critical of the federal government for its at times inflexible, litigate-or-negotiate policy. We recognize that in other spheres of life, litigation and negotiation go hand-in-hand. We are all familiar with the out of court settlements negotiated on the courthouse steps.

The conundrum is this: First Nations may feel forced to take legal action to protect interests they do not see being addressed at the treaty table. And then they cannot negotiate a resolution of their rights because they have taken legal action. It is a catch-22 situation.

In its facilitation efforts, the Treaty Commission has encouraged Canada and BC to be more flexible in their policies on litigation in cases involving individual First Nations, as well as those cases impacting all First Nations.

Most First Nations felt compelled to launch legal action in December 2003 to preserve their aboriginal rights and to prevent the governments of Canada and BC from using limitation defences under the provincial *Limitation Act*.

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Protest

First Nation leaders cite the continuing denial of aboriginal rights as the reason for the protest held on the lawns of the legislature in Victoria earlier this year.

Limitation statutes prevent plaintiffs from bringing actions to court after a set time. Talks to head off the need for legal action, facilitated by the Treaty Commission, were unsuccessful. Changing the legislation that imposes the limitation, or reaching a political agreement not to employ this legal defence were among the suggested solutions. In the end, First Nations did enter into abeyance agreements after filing writs in court.

Where specific litigation has arisen at individual tables, we have encouraged the parties to put in place an abeyance agreement in tandem with a negotiation work plan that sets out to address the issues that are the subject of the writ. And we encourage the parties to conclude interim measures that will temporarily protect the First Nation's interests pending resolution.

Mission statement arises from review

The Treaty Commission's primary task is to help the parties to reach agreements. In that regard, an independent effectiveness review last fall gave us a passing grade, but says we could be doing more.

Among the report's 12 recommendations is a call for the Treaty Commission to be more proactive: in disputes among the parties in treaty negotiations; in informing the public about treaty negotiations; and in explaining funding policies to First Nations.

The review underlines the importance of a strong, independent Commission adequately funded to facilitate treaty negotiations and to inform British Columbians about treaty making. The report says the Commission is managing its operations efficiently with a limited budget and has been particularly efficient in managing communications costs to date.

There is a consensus among the Principals that the Commission has proven itself and its objectivity such that it can now afford to 'take a stand' on key issues, the report says.

The review, undertaken by Deloitte and Touche, was commissioned by the Principals in the treaty process — the governments of Canada and British Columbia and the First Nations Summit.

First Nations are again asking the Treaty Commission to make sure the governments of British Columbia and Canada are fully aware of their fundamental commitments.

We have taken note of their concerns and the concerns we have heard from the other two governments. We are obliged to keep those fundamental commitments uppermost in our minds as we carry out our duties.

Commissioners have confirmed their belief that the BC Claims Task Force recommendations are the cornerstone of the treaty process. Adherence to those recommendations is essential to effective negotiations and the achievement of fair and honourable agreements.

As a result of the recommendations from the effectiveness review, Commissioners have advised the parties in treaty negotiations to expect a more forceful Treaty Commission.

Subsequently, a Mission Statement has been developed and made public, which sets the tone for actions the Treaty Commission will be taking to move treaty negotiations forward. The Mission Statement identifies 10 key recommendations from the *BC Claims Task Force Report* as requiring special attention.

The Treaty Commission has served notice that it will be more public and assertive in taking stances when the Principals or the parties in negotiations do not adhere to the Task Force recommendations identified in the Mission Statement. In the first instance, the Treaty Commission will report its concerns to the Principals or the parties. These reports will be the basis for public reporting where issues remain unaddressed.

The Treaty Commission is examining, and will report to the Principals on all aspects of its mandate and activities, including recommendations put forward during the course of the effectiveness review.

The key objectives in undertaking this examination will be to identify specific barriers to progress, including mandate issues, and to promote effective negotiations that result in fair and lasting agreements. Specifically, the Treaty Commission will inform each of the Principals of its findings through briefings expected to occur this fall.

It is necessary that the Principals and the Treaty Commission meet to address ongoing concerns about treaty making in British Columbia. It will be an opportunity for the newly appointed federal minister and newly elected First Nations Summit task group and the provincial minister to assess progress in treaty negotiations, discuss obstacles to further progress and consider any changes that may be required to the Treaty Commission's mandate as a result of recommendations contained in the effectiveness review.

We will be taking further action through intensive facilitation at specific tables where obstacles are preventing any appreciable progress. As well, the Treaty Commission will continue to monitor, and provide public information on key issues in negotiations involving First Nations in Stage 5.

Narrowing the gap

There has been a wide gap between the parties in negotiations. As we have said, to a greater degree than is perhaps recognized, that gap is narrowing.

The governments of British Columbia and Canada are recognizing aboriginal rights through:

> Consultation and accommodation agreements;
> Land use planning protocols;
> Cooperative resource management; and,
> A variety of other interim measures.

As proof of its commitment to a new relationship with First Nations, the BC government points to over 300 agreements, including 69 treaty related measures, 145 economic development projects and 15 agreements for co-management of parklands as "materially improving the quality of life for aboriginal British Columbians."

Treaties, of course, will provide the broadest recognition of authorities for First Nations and, by the same token, a greater degree of certainty for all British Columbians. From what we have observed in treaty negotiations,

the broadest recognition for First Nations will come in the form of:

> Ownership of treaty settlement land;
> Clear governance authorities;
> Capital transfers;
> Fiscal and tax structures;
> Harvest agreements;
> Revenue sharing;
> A cooperative management role-off treaty settlement land; and,
> The other terms of the treaty itself.

A treaty, with all of its components, should be an effective tool for achieving a prosperous and self-sustaining future for First Nation communities.

Four First Nations expect to conclude final agreements early in 2005, if they are able to maintain the current pace of intensive negotiations and reach agreement on all of the outstanding issues. Another dozen First Nations hope to achieve agreements in principle in 2005 or 2006.

The agreements in principle we have today leave a number of major issues to be negotiated. What is clear, however, is the commitment of the parties to negotiate a resolution of the issues and to reach agreement.

The four agreements in principle signed to date, and a fifth initialed by the negotiators, although not legally binding, do provide a degree of clarity over future treaty settlement land and resources, and a capital transfer. They are important milestones.

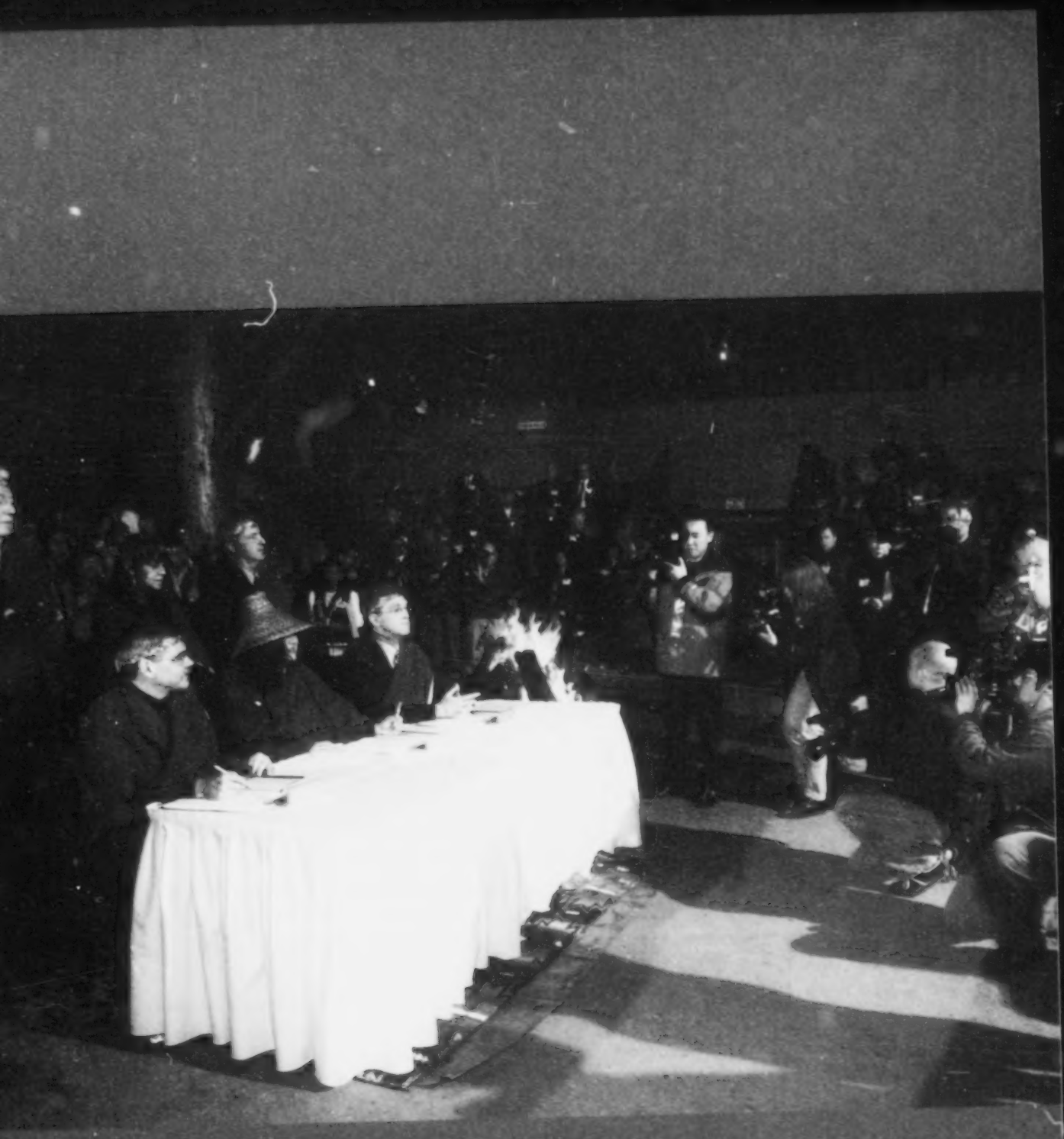
There were several reasons why First Nations and the governments of Canada and BC want agreements in principle and were prepared to defer negotiation of several substantial issues.

First Nations want some certainty of land ownership and access to resources and require an estimate of the cash amount. The governments of Canada and BC, First Nations and the Treaty Commission believe it is important that the constituents are informed of progress to date and, in the case of First Nations people whose rights are at the heart of the negotiations, are given an opportunity to determine if negotiations should continue based on that progress.

An added incentive for getting an early and less comprehensive agreement in principle was the promise of treaty related measures — a subset of interim measures supported by federal and provincial government funding that kicked in once an agreement in principle was reached — and the leverage the agreement provided in dealings with neighbouring industries and regional and local governments. However, in accepting the recommendations of the BC Claims Task Force, the parties committed to negotiating interim measures at any time.

First Nations in Stage 5, and now many in Stage 4, are beneficiaries of these treaty related measures, which can be used for several purposes, including:

> Information gathering and studies to support negotiations;
> Protection of Crown lands that are targeted for treaty settlements;
> Enhanced First Nations participation in land, resource and park management;



Ceremony

Television cameras capture the signing of the Tsawwassen Agreement in Principle signed earlier this year by (left to right) Indian Affairs Minister Andy Mitchell, Tsawwassen Chief Kim Baird and Minister Responsible for Treaty Negotiations Geoff Plant.

> Protection of cultural artifacts;
> Enhanced access to lands and resources prior to a final treaty settlement;
> Land acquisition for treaty settlement (under the willing buyer/willing seller principle);
> Economic development opportunities; and,
> Groundwork to support the development of self government.

Negotiators are currently working towards complete agreement on the issues of governance, certainty, compensation, cooperative management, revenue sharing, fiscal and financing arrangements, taxation and fish. Negotiation of these issues is taking place primarily at Stage 5 tables.

An alternative approach now being taken by some First Nations is to conclude a comprehensive agreement in principle whereby there is agreement on all of the substantive issues prior to Stage 4 ratification.

Obstacles to progress remain

Several barriers to more sweeping progress remain acute. The following impediments, while not an exhaustive list of obstacles, are those the Treaty Commission has identified as requiring special, and immediate, attention.

Certainty provisions

The challenge in a treaty is to achieve certainty without extinguishing aboriginal rights. In the past, the Crown has required First Nations to 'cede, release and surrender' their aboriginal rights in exchange for treaty rights.

The BC Claims Task Force rejected the notion of extinguishment. The governments of Canada and BC agree that blanket extinguishment of aboriginal rights is not an option, and along with First Nations, have been earnestly seeking an alternative. Canada continues to insist on a form of release that poses a serious challenge to First Nations, although BC appears to no longer require such a release. An orderly process for the consideration or addition of rights not included in the treaty has been identified as a key issue in these negotiations.

Lack of resources

The BC government continues to concentrate its resources at a handful of tables. Although the Treaty Commission raised concerns in its last annual report about the lack of resources, not much has changed over the past year. We continue to meet with BC government representatives to discuss resourcing issues and through proactive facilitation have managed to address specific resourcing concerns at a number of tables.

We urge the BC government to provide adequate resources to treaty tables where First Nations are ready, willing and able to negotiate. Specifically, treaty teams should be sufficiently staffed with skilled and experienced people and be adequately supported by provincial ministries.

While Stage 5 tables are actively engaged in the negotiation of all issues, many treaty tables are not sufficiently engaged in negotiations for the Treaty Commission to make a realistic assessment of their prospects for agreements. Progress for a handful of treaty tables should not come at the expense of other negotiation tables. This is inconsistent with the federal and provincial government's commitment to start negotiations as soon as First Nations are ready. There should be no limit to the number of concurrent negotiations and no unilateral restriction on the scope of negotiations.

Scarcity of urban Crown land

A scarcity of Crown land for treaty settlements is an issue taking on greater urgency as treaty negotiations gain momentum in southern Vancouver Island, the Lower Mainland and the Fraser Valley.

Currently, there is no effective way to identify, assemble and hold Crown land on a coordinated, priority basis pending the achievement of treaties in these urban areas. Where Crown land is limited, available-for-purchase private land and other elements of the treaty will be critical to settlements in urban areas.

One example where the urban land issue is particularly acute is at the Musqueam First Nation table. The First Nation has successfully stopped the transfer and disposal of a 133-acre parcel of federal fisheries' lands in Richmond known as the 'Garden City Lands'. Land protection of key urban land parcels was to have been a priority at the Musqueam treaty table. The parties initialled a framework agreement in December 2003 and were to begin substantive agreement-in-principle negotiations. However, Musqueam felt compelled to go to court to stay the expedited disposal of the Garden City Lands.

Musqueam obtained an injunction in January 2004, which was upheld in a subsequent decision, against Fisheries and Oceans Canada, Canada Lands Corporation, federal Treasury Board and Governor in Council, restraining them from transferring or selling the Garden City Lands. The injunction also prohibits the city of Richmond from purchasing the land. Judge Michael Phelan based his reasons on Canada's failure to accommodate or consult as that duty is set out in the *Haida* and *Taku River* cases. The injunction remains in place until an appeal is heard in the Federal Court of Appeal later this year.

Injunctions on lands over which First Nations claim an interest not yet defined in a treaty or a court decision, are rare, so this action highlights the critical nature of the urban land issue, and its potential to undermine the treaty process.

The Treaty Commission is urging the governments of BC and Canada to protect available Crown land, both surplus and underutilized land, on an interim basis pending the settlement of treaties, and to consider potential economic opportunities for First Nations in buildings now owned by either the federal or provincial governments. For example, a surplus federal building in Nanaimo formed part of the proposed agreement with Snuneymuxw First Nation.

It is clear from the Treaty Commission's perspective that interim measures are an ideal tool for protecting Crown land from alienation, pending the outcome of treaty negotiations, as was envisioned in the *BC Claims Task Force Report*.

Use of fish allocations

First Nations have for thousands of years sustained vibrant and rich cultural identities profoundly linked to the lands, waters and resources that now form British Columbia. First Nations also have had a role, sometimes greater, sometimes less, in the commercial fisheries since the early days of European contact.

So, for First Nation governments, gaining greater access to the commercial fishery as part of treaty negotiations is really about recognizing that fish is both an integral part of their culture, and critical to restoring economic self-sufficiency.

Many First Nations expect treaties to provide an allocation of fish to be used for either domestic use or sale.

In agreements in principle signed to date, it is proposed that fish caught under treaty provisions are for food, social or ceremonial purposes, whereas fish caught under harvest agreements, signed separately from treaties, are for commercial use. This is the case in the Nisga'a treaty.

The aboriginal food fishery has been recognized by the Supreme Court of Canada as a right enshrined in the constitution, and for that reason the government of Canada has given it priority over all other fishing.

The commercial fishery, by contrast, has been held by the Supreme Court of Canada not to be a general aboriginal right but one that must be proved on a case-by-case basis in light of the historical circumstances of each First Nation.

Agreements between First Nations and Fisheries and Oceans Canada under the Aboriginal Fisheries Strategy had provided for the aboriginal food fishery as well as the commercial fishery.

Agreements for the commercial fishery, known as pilot sales agreements, were intended as interim measures to provide some First Nations with commercial access to fish, pending the settlement of treaties.

These agreements were suddenly terminated in 2003 following the *Kapp* decision in provincial court declaring them contrary to the Charter of Rights and Freedoms. That decision was overturned on appeal to the BC Supreme Court before Chief Justice Donald Brenner. He ruled in July 2004 that sales of fish were legal and did not infringe on the rights of non-natives. Pilot sales have been restored, but an appeal has been launched in the BC Court of Appeal.

Two reports on the commercial fishery have been completed for the benefit of First Nations and the governments of Canada and BC.

Court The Haida made their case for consultation and accommodation before the Supreme Court of Canada in March of this year. A decision is expected this fall.

According to the report, *Treaties and Transitions*, by Donald McRae and Dr. Peter Pearse, "long-term rights provided by harvest agreements are well suited to commercial fisheries, generally."

McRae and Pearse took a detailed look at the agreements in principle signed to date and their implications for post-treaty fisheries. Their analysis suggests the fears that there will be no room left for non-aboriginal fishers if treaty settlements continue on their present path are exaggerated.

The authors calculate that if future settlements increase sockeye allocations by the same magnitude as the agreements in principle agreed to so far, the cumulative result after all treaties are settled will be an allocation of 33 per cent of the total coast-wide catch of sockeye to First Nations under their provisions for food fishing and commercial use combined. However, McRae and Pearse admit their statistical basis for the estimates is somewhat weak.

It is now up to the governments of Canada and BC that commissioned the study to act on the many recommendations contained in the report.

The second report on the west coast fishery is from a panel appointed by the First Nations Summit and the BC Aboriginal Fisheries Commission. It was established because no First Nation representatives were appointed to the fisheries panel established by the governments of Canada and British Columbia.

The First Nations panel is calling for a complete overhaul of the west coast fishery and immediate recognition of aboriginal fishing and fisheries management rights.

The panel is calling on the Canadian government to allocate to aboriginal fishers a 50 per cent share of all fisheries, as an interim measure until management and allocation are resolved through treaties or other negotiated agreements.

In *Our Place At the Table: First Nations in the BC Fishery*, authors Russ Jones, Marcel Shepert and Neil Sterritt identify a number of treaty issues, but note that some First Nations in the treaty process are negotiating actively and with some success to resolve these issues. For many more First Nations, the treaty process is slow and there is little or no progress on fishery issues.

The report states that the treaty process falls short of many First Nations' expectations for the fishery and may affect the interests of those First Nations that have chosen not to participate in treaties.

Unresolved overlaps

Unresolved overlaps are assuming greater significance as treaty negotiations intensify for those First Nations approaching treaties or agreements in principle.

Traditional territories of First Nations can and do overlap. Overlaps exist for a variety of reasons: a tradition of sharing territory for the use of specific resources; movements of families or tribes; or longstanding disputes. Our concern is with disputes between First Nations over territory.

Despite the fact there has been a voluntary, three-step protocol in place since May 1997 formally adopted by the First Nations Summit, it remains a little-used tool. Because success in resolving overlaps has been limited, we urge First Nations to resolve issues related to overlapping traditional territories among themselves.

Where treaty negotiations will be hampered by unresolved overlaps, the Treaty Commission intends to step up its facilitation efforts.

Transboundary First Nations

Despite our urgings and efforts to facilitate a start to substantive negotiations between the BC government and northern, transboundary First Nations, the BC government has yet to commit to these negotiations.

Two bright spots are the creation of the Northern Nations Alliance and the ongoing discussions between the BC and Yukon governments.

In June 2004, northern nations and organizations with traditional territory in northern BC, the Yukon and Northwest Territories signed a treaty to form the Northern Nations Alliance.

The treaty asserts the rights and title of the member nations and ensures that all decisions affecting the future of Northern Nations Alliance lands will be made in a cooperative manner with all signatory nations as full and equal participants.

The Northern Nations Alliance includes Carcross/Tagish First Nation, Champagne/Aishihik First Nation, Dakh Ka Tlingit Nation, Daylu Dena Council, Dease River First Nation, Iskut First Nation, Kaska Dena Council, Kaska Tribal Council, Kwadacha Nation, Liard First Nation, Ross River Dena Council, Tahltan Band Council, Tahltan Central Council, Taku River Tlingit First Nation and the Teslin Tlingit Council.

The BC and Yukon governments are considering economic and other issues, and have signed a protocol for the coordination of program services and resource management and development. It is likely that these developments will necessitate solutions involving northern First Nations.

...our progress report

There are 55 First Nations participating in the BC treaty process at 44 negotiation tables.

5 First Nations in Stage 5
Lheidli T'enneh Band
Maa-nulth First Nations
Sechelt Indian Band
Sliammon Indian Band
Tsawwassen First Nation

41 First Nations in Stage 4
Carcross / Tagish First Nation
Cariboo Tribal Council
Carrier Sekani Tribal Council
Champagne and Aishihik First Nations
Da'naxda'xw Awaetlatla Nation
Ditidaht First Nation
Esketemc First Nation
Gitanyow Hereditary Chiefs
Gitxsan Hereditary Chiefs
Gwa'Sala-'Nakwaxda'xw Nation
Haisla Nation
Heiltsuk Nation
Homalco Indian Band
Hul'qumi'num Treaty Group
In-SHUCK-ch Council
Kaska Dena Council
Katzie Indian Band
Klahoose Indian Band
Ktunaxa/Kinbasket Treaty Council
Kwakiutl Nation (in suspension)
Laich-Kwil-Tach K'omoks Tlowitsis Council of Chiefs
Lake Babine Nation
'Namgis Nation
Nazko Indian Band
Nuu-chah-nulth Tribal Council
Oweekeno Nation
Pacheedaht Band
Quatsino First Nation
Snuneymuxw First Nation
Sto:Lo Nation
Taku River Tlingit First Nation
Te'Mexw Treaty Association
Teslin Tlingit Council
Tlatlasikwala Nation
Tsay Keh Dene Band
Tsimshian Nation
Tsleil-Waututh Nation
Westbank First Nation
Wet'suwet'en Nation
Yale First Nation
Yekooche Nation

3 First Nations in Stage 3
Cheslatta Carrier Nation
Musqueam Nation
Squamish Nation

6 First Nations in Stage 2
Acho Dene Koe First Nation
Council of the Haida Nation
Hupacasath First Nation
Liard First Nation
McLeod Lake Indian Band
Ross River Dena Council

Acho Dene Koe First Nation

Acho Dene Koe entered the treaty process in November 2000 and is now in Stage 2, preparing to begin negotiations. The Treaty Commission is awaiting a response from the BC government on its position regarding transboundary negotiations with the Acho Dene Koe.

The First Nation has approximately 550 members and is located in Fort Liard, 25km north of the BC-Northwest Territories border. Acho Dene Koe has traditional territory on both sides of the border.

Cariboo Tribal Council (Northern Secwepemc te Qelmucw, NStQ)

Negotiations at the NStQ table are moving forward with a projected target date for an agreement in principle of approximately one year. In February, the parties publicly released draft chapters on culture and heritage, implementation, approval of the agreement in principle and ratification of the final agreement. Since then, negotiations have focused on fish, governance and lands. The parties are exploring options for addressing the NStQ First Nations' particular interest in having a role in managing lands and resources throughout their traditional territory. In this regard, NStQ's involvement in the sub-regional land and resource planning process, supported by a treaty related measure, is providing valuable experience of and information on intergovernmental cooperation and land use planning in the region.

NStQ comprises four member communities located around the Williams Lake area: Williams Lake Band, Soda Creek Band (Xatsu'll First Nation), Canoe Creek Band and Canim Lake Band (Tsqescen). The First Nation has approximately 1,940 members.

Carrier Sekani Tribal Council (CSTC)

In December 2002, after lengthy forestry negotiations, CSTC informed the Treaty Commission of its intent to return to comprehensive treaty negotiations and agreed to update the readiness documents it filed with the Treaty Commission in 1995. While this was underway, Canada notified CSTC of its concern about the lack of progress at the table and the possibility of its disengaging if a tripartite work plan could not be developed. The Treaty Commission informed Canada of CSTC's work to prepare for comprehensive negotiations, and expressed the view that disengagement should only be considered on a tripartite basis and after all other options had been exhausted.

As a result, Canada agreed that CSTC should update its readiness documents and that the parties would then exchange their interests to determine if further progress was possible. From February to September of 2003, CSTC worked to prepare for comprehensive negotiations by reaffirming its commitment to the BC treaty process, confirming the composition of its treaty team, updating its treaty vision and confirming that each member nation would participate in the negotiations. From November 2003 to April 2004 the parties discussed approaches to advance negotiations, and exchanged lands, governance, certainty and revenue sharing interests. In June 2004 the parties agreed on a tripartite work plan to reach a high-level understanding on lands and governance by October 2004.

Carrier Sekani Tribal Council, northwest of Prince George, represents eight communities; Wet'suwet'en First Nation, Burns Lake Band, Nadleh Whut'en Band, Nak'azdli Band, Saik'uz (Stoney Creek) First Nation, Stellat'en First Nation, Takla Lake First Nation and Tl'azt'en Nation. The combined membership of the council is approximately 5,400.

Cheslatta Carrier Nation

The parties at the Cheslatta table have not engaged in tripartite negotiations since 1997. The Treaty Commission met with Cheslatta in October 2003 to provide an update on the treaty process. Since then, Cheslatta has indicated an interest in holding treaty information workshops at a future date.

In February 2004 Canada wrote the First Nation indicating it remained committed to treaty negotiations should Cheslatta choose to resume them, but understood that Cheslatta had other priorities at this time.

Cheslatta is concentrating on economic development initiatives outside the treaty process, including a recent agreement with Alcan to log mountain pine beetle infested timber on company-owned lands.

A First Nation with approximately 270 members, Cheslatta traditionally occupied and used the land and water around the Ootsa and Eutsuk lakes and surrounding areas.

Council of the Haida Nation

The Haida won an important appeal court decision in February 2002 that clarified that the Crown and Weyerhaeuser are under a legally enforceable duty to consult with the Haida and to accommodate Haida interests in their traditional territory. The province appealed the decision, and in March 2004 the Supreme Court of Canada heard arguments from the Haida, Canada and BC. It is expected the court will make its ruling in the fall of this year. The Council of the Haida Nation also continues to pursue its aboriginal title case over the whole of Haida Gwaii (Queen Charlotte Islands).

While waiting for the final ruling from the Supreme Court of Canada the three parties are exploring whether there is basis for engaging in tripartite negotiations.

Important progress has also been made in land use planning. Since April 2001, the Haida Nation joined seven other coastal First Nations to sign the Turning Point protocol agreement, which commits First Nations and the provincial government to cooperate on land use planning and implementation of interim agreements for the north and central coast. In February 2003 the Haida and the province entered into a land use planning framework agreement that will address Haida interests in the protection of old growth cedar, and areas of high cultural or environmental value and potential for sustainable resource extraction.

Located on Haida Gwaii, the council has 3,575 members.

Ditidaht First Nation/Pacheedaht Band

Negotiations resumed in spring 2004 to determine whether there is a basis for achieving an agreement in principle. These negotiations had been interrupted pending the First Nations' discontinuance of their participation in a legal action against Canada and BC that seeks recognition of the aboriginal right to fish commercially.

Ditidaht and Pacheedaht have been negotiating at a common table since August 1997. Ditidaht, based at Nitinaht Lake, has approximately 630 members, and Pacheedaht, based in Port Renfrew, has approximately 250 members. The First Nations' traditional territories span the southwest corner of Vancouver Island.

Esketemc First Nation

After a period of infrequent meetings, the pace of Esketemc negotiations has recently increased. The First Nation has taken the initiative by tabling draft chapters that were prepared in consultation with the community. Topics currently under discussion include culture, language and heritage; forestry; and subsurface and mineral resources. Esketemc has indicated the need to engage in a land use planning exercise in order to support their land negotiations.

A First Nation with approximately 700 members, Esketemc traditionally occupied and used the Alkali Lake area southwest of Williams Lake.

Gitanyow Hereditary Chiefs

In early 2003, agreement in principle negotiations stalled when the parties were unable to find common ground on key issues. Gitanyow terminated an abeyance agreement that had set their court action aside in favour of negotiations. Through the remainder of 2003 and into 2004, the Treaty Commission worked with the parties to facilitate a return to negotiations. In May 2004 a new abeyance agreement was signed, and in July the parties agreed to address key outstanding issues, including the melding of traditional and elected forms of Gitanyow government, the certainty model, treaty land status, and the Gitanyow/Nisga'a Nation territorial overlap. The parties agreed to a deadline of October 2004 to achieve their objective.

Gitanyow's traditional territory spans the middle reaches of the Nass River. The First Nation has approximately 680 members.

Gitxsan Hereditary Chiefs

Negotiations at the Gitxsan table have remained steady this year, but progess toward an agreement in principle has been slow. In March 2004, the majority of head chiefs affirmed the First Nation's mandate to continue treaty negotiations. Gitxsan are concentrating on fish, language and culture, dispute resolution, approval of agreement in principle, ratification of final agreement and health.

Gitxsan traditionally occupied and used the land and water around the upper reaches of the Skeena and Nass Rivers. The First Nation includes Gitanmaax Band Council, Gitwangak Band Council, Kispiox Band Council, Gitsegukla Indian Band and Glen Vowell Indian Band, and comprises approximately 5,600 members.

Haisla Nation

Haisla negotiations have proceeded steadily over the past year after an extended period of low activity. To date, the parties have reviewed and updated existing draft chapters. Topics under discussion include culture and heritage, environmental assessment and protection, wildlife, parks and protected areas, access, forestry and subsurface rights. Several procedural chapters are also substantively complete. The parties have yet to determine a target date for concluding an agreement in principle.

Haisla has initiated and instituted several innovative economic partnerships and continues to develop its land interests. The First Nation, part of the Turning Point initiative, sees that these efforts would be greatly supported by the development of a land use plan for their traditional territory.

The First Nation has approximately 1,450 members, with traditional territory around the Kitimat area and the north coast.

Hamatla Treaty Society (Laich-Kwil-Tach Komoks Tlowitsis Council of Chiefs)

Over the past year, the Hamatla Treaty Society has focused its efforts on internal restructuring, community information and building intergovernmental relationships. With the renewed commitment of member nations to work together towards a treaty and the development of a tripartite work plan, the table is positioned to resume tripartite negotiations this fall.

The Council of Chiefs includes five communities with a combined membership of approximately 2,060: K'omoks, Kwiakah, Tlowitsis, Wei Wai Kai and Wei Wai Kum. The First Nation traditionally occupied and used the land around the Campbell River-Courtenay-Comox region, including parts of Knight Inlet, Call Inlet, Loughborough Inlet, Bear Inlet, and Toba Inlet.

Heiltsuk Nation

The Heiltsuk took time out from tripartite negotiations in May 2001 to review its mandate to negotiate an agreement in principle. They have since extended this to await the outcome of the negotiations currently being conducted at the four Stage 5 tables.

In the meantime, Heiltsuk has endorsed the Turning Point protocol agreement, which commits First Nations and the provincial government to cooperate on land use planning and implementation of interim agreements for the north and central coast. As part of the Turning Point agreement, Heiltsuk committed to the central coast land use plan. In September 2003 the Heiltsuk Nation and the BC government signed the Hakai Lúxvbális conservancy area collaborative management agreement. The conservancy area, representing more than 122,998 hectares of land and marine environment, is the largest marine protected area on the BC coast. The agreement sets out the parties' shared commitment to environmental management to ensure sustainability, accountability and responsibility and to create a framework for respecting and advancing First Nations' interests.

Heiltsuk's traditional territory spans the central coast. The First Nation, based on Campbell Island, has approximately 2,070 members.

Homalco Indian Band

Negotiations for Homalco progressed slowly during the first half of this year. The Treaty Commission was asked to intervene to help address the obstacles to progress. In October 2003, the chief negotiators agreed to changes that have enabled negotiations to gain moderate momentum.

Homalco has approximately 430 members with traditional territory ranging from Campbell River and Bute Inlet watershed to Chilko Lake.

Hul'qumi'num Treaty Group

Negotiations at the Hul'qumi'num table continued at an intense pace this year. The parties face the special challenge of negotiating an agreement in an area with little available Crown land — almost all of Hul'qumi'num traditional territory is now private forest land. Negotiators, though, are still working towards an initialed, comprehensive agreement in principle by late 2004 or early 2005.

Hul'qumi'num Treaty Group represents approximately 5,750 people and six communities: Chemainus, Cowichan Tribes, Halalt, Lake Cowichan, Lyackson and Penelakut. The First Nation's traditional territory encompasses the area around Duncan, north to Ladysmith, east to the Gulf Islands and the lower Fraser River and west to Cowichan Lake.

Hupacasath First Nation

The main focus for the Hupacasath Nation has continued to be economic opportunities and partnerships in the Alberni valley. The First Nation has also been seeking intergovernmental agreements on land use planning and cooperative management.

Numbering approximately 230 members, the Hupacasath First Nation has its reserve at Port Alberni.

In-SHUCK-ch Council

The three parties have made substantial progress towards an agreement in principle. In early 2004, the parties agreed to focus efforts to conclude agreement-in-principle negotiations by the end of March 2005. The challenge will be to meet the First Nation's wish to completely resolve the key treaty subjects within this fixed timeframe, rather than defer them. Nevertheless, this objective may be realizable: the parties understand and respect the key principles of the treaty process, have the necessary political leadership and community consultation and mandate development processes, and have skilled legal, technical and negotiation staff.

It is expected the parties will focus on land negotiations in early fall, and will attempt to resolve the final outstanding matters (including certainty, governance, taxation, fiscal arrangements, land management and economic development) by December 2004 and January 2005.

The In-SHUCK-ch Council traditionally occupied and used the land south of the Lillooet area and has approximately 840 members.

Kaska Nation

These negotiations have been stalled throughout 2004 as a result of the suspension of negotiations by Canada because of ongoing litigation by some Kaska communities. The parties have been attempting to negotiate an abeyance agreement in order to resume negotiations. In the interim, the Kaska continue to develop joint ventures with local companies and to work with various ministries on resource management and planning in Kaska traditional territory.

On June 9, 2004, the Kaska Nation communities signed a treaty with other nations and organizations from northern BC, the Yukon and Northwest Territories to form the Northern Nations Alliance. Combined, the signatories' traditional territories comprise half a million square kilometres. The treaty asserts the rights and title of the member nations and ensures that all decisions affecting their lands will be made cooperatively, with all signatory nations as equal participants. The alliance is developing a broad mandate that includes joint planning and management initiatives for economic development, resource management and land use planning and education as well as negotiating agreements with First Nations, public governments and industry.

The Northern Nations Alliance includes Carcross/Tagish First Nation, Champagne/Aishihik First Nation, Dakh Ka Tlingit Nation, Daylu Dena Council, Dease River First Nation, Iskut First Nation, Kaska Dena Council, Kaska Tribal Council, Kwadacha Nation, Liard First Nation, Ross River Dena Council, Tahltan Band Council, Tahltan Central Council, Taku River Tlingit First Nation, and the Teslin Tlingit Council.

Kaska Nation includes Kaska Dena Council, Liard First Nation and Ross River Dena Council, with a combined membership of approximately 3,000. The First Nation's traditional territory ranges from north-central BC to the Yukon and Northwest Territories.

Katzie Indian Band

Katzie negotiations continue to progress at a moderate pace at monthly meetings. The parties are engaged in substantial drafting of joint principles and/or chapters on wildlife, migratory birds, parks and protected areas and culture and heritage. Governance has also been touched on, and fish and forestry will soon be addressed. In addition, the Katzie table continues to build intergovernmental relationships between the First Nation and surrounding municipalities. The First Nation has also expressed interest in furthering intergovernmental relations with the Greater Vancouver Regional District.

The First Nation secured two treaty related measures — one relating to culture and heritage protection with an intergovernmental component, the other for tourism/recreation opportunities.

A major concern of the Katzie First Nation has been the planned Fraser River bridge crossing and its impact on their traditional territory. In early August, Katzie members voted to accept a $1.8 million offer from Translink, as well as mitigating measures to offset the impact of the bridge. The Translink benefits package includes employment opportunities.

A First Nation with approximately 460 members, Katzie traditionally occupied and used the land and water around Pitt Lake, Pitt River, Surrey, Langley, New Westminster and Vancouver.

Klahoose Indian Band

Since entering the treaty process, the parties have faced numerous challenges. Throughout 2001-2003 progress was slowed by significant differences on land issues, and by a major change in Klahoose's leadership and treaty team. In mid-2003, Canada notified Klahoose that it might consider disengagement if a tripartite work plan could not be developed. The Treaty Commission responded by informing Canada that disengagement should only be considered on a tripartite basis, and after all other options had been exhausted. Subsequently, the parties developed a tripartite work plan, and Canada deferred its disengagement assessment.

The parties have developed an agenda that includes both non-contentious and key treaty chapters. Each party must now make a realistic assessment of the potential for a final agreement, given the significant cost of negotiation and the unique circumstances of the First Nation. The Treaty Commission will monitor these negotiations closely, with the expectation that the next several months will be the test of whether progress can be made.

Klahoose has approximately 290 members and a traditional territory on the mainland opposite Campbell River.

Ktunaxa/Kinbasket Treaty Council (KKTC)

The KKTC table has made significant progress in developing innovative approaches to resolving key issues related to land, fish and wildlife, and culture and heritage. At the end of 2003, negotiators developed a strategic plan for reaching comprehensive agreement by identifying outstanding issues and priorities for the following year(s). Since then, the table developed memoranda of understanding on working relationships between KKTC and British Columbia and KKTC and Canada on fish and wildlife management, archaeological resources and parks and protected areas. These are intended to inform further negotiations on these topics. In addition, the forestry chapter was substantially completed. The table is also exploring possible approaches to recognition and reconciliation as well as resource revenue sharing.

KKTC secured a significant treaty related measure that will allow it to develop a land model with citizen input, and thereby further refine KKTC land interests. This work will be informed and supported by the KKTC lands and resources agency. Through this agency, KKTC are creating employment and training opportunities, developing planning and management capacity, and exploring governance components.

Finally, KKTC is working on implementing economic measures that provide for opportunities related to coalbed methane exploration and forestry.

The Ktunaxa/Kinbasket Treaty Council has approximately 1,150 members and includes Columbia Lake Band, Lower Kootenay Band, Shuswap Indian Band, St. Mary's Indian Band and Tobacco Plains Band. The territory of the Ktunaxa/Kinbasket people extends from Columbia River south to Missoula, Montana, west to Bonner's Ferry, Idaho, north to the Upper Arrow Lakes area of British Columbia and east to the Rocky Mountains.

Lake Babine Nation

There has been no tripartite activity in Lake Babine negotiations over the past year, following a change in the First Nation's leadership. The First Nation has concentrated its efforts on community relations and internal restructuring and is in the process of determining next steps regarding treaty negotiations.

Lake Babine, a First Nation with approximately 2,000 members, traditionally occupied and used the land and water around Lake Babine.

Lheidli T'enneh Band

The Lheidli T'enneh table is now in Stage 5 final agreement negotiations, after signing an agreement in principle on July 26, 2003. The agreement in principle provides $12.8 million in capital transfer and approximately 4,027 hectares of land. Lheidli T'enneh will have law making authority over the management and development of those lands. The BC government will work with Lheidli T'enneh to pursue a commercial recreation tenure opportunity in the Willow River watershed to be effective after the final agreement. The parties continue to explore forest tenure opportunities and other cooperative arrangements in the Willow watershed. To date, final agreement negotiations have been concentrated on clarifying the land package and engaging on a range of highly complex issues, including governance, forestry, taxation and fiscal arrangements.

In a significant break with the usual negotiation pattern in the BC treaty process, Lheidli T'enneh has joined with Sliammon to negotiate tax and fiscal provisions with Canada and BC, and with Sliammon and Tsawwassen to negotiate governance provisions. Sliammon and Tsawwassen are also in Stage 5.
In April 2004, $508,507 in treaty related measures funding was committed to Lheidli T'enneh to advance treaty negotiations, including a constitution development study and intergovernmental relations project, forestry planning study, a fisheries study and to develop management and economic development strategies.

The Lheidli T'enneh traditionally used and occupied the land and water around Prince George, including the Nechacko and Fraser River area to the Alberta border. Today, the First Nation has approximately 300 members and 685 hectares of reserve land just outside Prince George.

Maa-nulth First Nations

The parties at the Maa-nulth table are actively engaged in Stage 5 negotiations, which they aim to complete during the first quarter of 2005. The five Maa-nulth Nations are Ucluelet, Huu-ay-aht, Toquaht, Ka:'yu:'k't'h'/Che:k'tles7et'h' and Uchucklesaht, with a total population of approximately 2,000 members.

Originally part of the Nuu-chah-nulth treaty table, these five nations are among the six Nuu-chah-nulth nations that approved the Nuu-chah-nulth Agreement in Principle in March 2001. A separate Maa-nulth Agreement in Principle was signed on October 3, 2003.

The agreement in principle provides for 20,900 hectares of provincial Crown land in addition to 2,105 hectares of existing reserve and a capital transfer of $62.5 million. The Ucluelet Nation will receive $6.25 million to purchase private property from a willing seller. Settlement lands will be held in fee simple. The agreement provides for a domestic allocation of fish within the treaty and commercial fisheries opportunities outside the treaty. It also provides for agreements outside the treaty regarding the First Nations' role in the operation and management of specific parks. Maa-nulth First Nations' self government will be achieved through both the final agreement and a self government agreement that is outside the treaty.

McLeod Lake Indian Band

On February 4, 2004 the McLeod Lake Indian Band's statement of intent was accepted by the Treaty Commission. It is anticipated that that these negotiations will build upon the McLeod Lake Treaty 8 Adhesion and Settlement Agreement finalized in 2000. While all three parties have committed to negotiate, they have expressed substantially different views as to the projected outcome of governance negotiations. The Treaty Commission will facilitate further dialogue among the parties to assist them in their understanding of each other's visions and expectations.

The McLeod Lake Indian Band currently has approximately 420 members, with the main community located 150 kilometres north of Prince George.

Musqueam Nation

The parties at the Musqueam table met several times over the past year to explore options for resuming negotiations, which had been stalled over the issue of compensation. Subsequently, the parties have initialled a framework agreement, and are scheduling a signing ceremony for later in the fall. In the meantime the parties are engaged in land discussions.

The First Nation has approximately 1,080 members, with traditional territory spanning the Greater Vancouver area.

Nazko Indian Band

The Nazko table is meeting approximately every six weeks. Several procedural chapters and a lands chapter have been drafted. Other topics are also being explored through federal and provincial interest presentations, as well as through a review of language from existing agreements in principle. Nazko intends to concentrate on land and access-related topics. It will also focus on community information initiatives to build on the growing interest of community members in the treaty process.

Nazko's traditional territory is northwest of Quesnel and southwest of Prince George. The First Nation has approximately 290 members.

Northern Regional Negotiation Table (NRN)

There has been no tripartite negotiations at the NRN table since the spring of 2003 when the BC government announced that it would not return to the table until it had reassessed its mandate for transboundary negotiations. In the meantime, the NRN First Nations have developed an agreement with the Kaska and Tahltan First Nations that provides for close cooperation in many areas (see Kaska Dena Table report).

The Champagne and Aishihik First Nations, Carcross/Tagish First Nation, Taku River Tlingit First Nation and Teslin Tlingit Council are negotiating together at the Northern Regional Negotiations table and represent approximately 2,160 members. The four First Nations traditionally occupied and used land and water in the southwestern Yukon and the northwestern corner of BC.

Nuu-chah-nulth Tribal Council

The Nuu-chah-nulth treaty table comprises Ahousat, Ehattesaht, Hesquiaht, Mowachaht/Muchalaht, Nuchatlaht, Tseshaht and Tla-o-qui-aht. All but one of these nations did not ratify the agreement in principle that was initialed in March 2001.

The parties have been exploring a basis for resuming active negotiations in light of the Nuu-chah-nulth legal action against Canada and BC that seeks recognition of the aboriginal right to fish commercially. Agreement has recently been reached to resume negotiations in the fall on several topics.

Numbering approximately 5,500 members, the traditional territories of the member nations span the west coast of Vancouver Island from Barkley Sound to Kyuqout Sound.

Oweekeno (Wuikinuxv) Nation

In January 2004 negotiations resumed, following a pause to allow Oweekeno to prepare for accelerated negotiations. With strong leadership from the Oweekeno chief and council and treaty advisory committee, the First Nation resumed negotiating with an informed mandate, experienced treaty team and an interest to complete comprehensive agreement-in-principle negotiations by 2005. To facilitate progress, Oweekeno will draw upon its land use planning work with the Ministry of Sustainable Resource Management outside the treaty table.

The First Nation has approximately 240 members, with a traditional territory around the central coast south of Bella Coola.

Sechelt Indian Band

In December 2003, the governments of British Columbia and Canada responded to Sechelt's conditions for resuming treaty negotiations. Both parties reaffirmed their commitment to negotiating a final agreement with Sechelt and their willingness to discuss the many issues Sechelt raised, but did not agree that the parties need to amend the agreement in principle signed in 1999. Sechelt has not yet responded.

Sechelt has been self-governing since 1986 when it signed the first self government agreement in Canada — *The Sechelt Indian Band Self-Government Act*. Sechelt, a First Nation with approximately 1,050 members, traditionally occupied and used the land and water around the Sechelt Peninsula..

Sliammon (Tla'amin) First Nation

On October 4, 2003 the majority of Sliammon constituents approved the Sliammon Agreement in Principle. In moving into Stage 5 negotiations, the chief and council and treaty team have focused on strengthening the family-based mandate development process, coordinating negotiations, implementing initiatives triggered by the approval of the agreement in principle, and engaging with Canada and BC on highly complex and critical final agreement subjects. In addition, Sliammon has taken a leadership role in developing cooperative relationships with local government and industry with the aim of creating increased community benefits on the basis of mutual respect, trust and understanding.

Sliammon traditionally occupied and used the land and water around the Powell River area, including Sliammon, Powell Lake, portions of the Gulf Islands, Courtenay and the Desolation Sound area. Today the First Nation has approximately 900 members.

Snuneymuxw First Nation

The negotiators for Canada and BC and Snuneymexw First Nation initialed an agreement in principle in April 2003 and recommended that it be ratified. This was the first table to recommend an agreement in principle following the period of increased activity that flowed from the Treaty Commission's review of the treaty process in 2001, notwithstanding the difficult challenges it faced as a result of the limited Crown land available in the area. Snuneymuxw has delayed the ratification vote on the agreement in principle pending clarification of a number of issues that had been deferred to Stage 5 negotiations.

Snuneymuxw's traditional territory ranges from the central Vancouver Island — including Gabriola Island, Mudge Island and other adjacent islands — to the Nanaimo River watershed. The First Nation has approximately 1,350 members.

Squamish Nation

Squamish received a letter from Canada in February 2004 stating that Canada has concluded that Squamish has elected to pursue priorities other than engaging in active treaty negotiations. The Treaty Commission wrote to Squamish in April 2004 encouraging them to consider treaty negotiations. Squamish is concentrating on economic development and the 2010 Winter Olympics.

Squamish's traditional territory ranges from the Lower Mainland to Howe Sound and the Squamish valley watershed, measuring 6,732 square miles. The First Nation has approximately 3,230 members, 2,000 of whom live on Squamish Nation reserves.

Sto:Lo Nation

After engaging in a tripartite table assessment of the state of treaty negotiations and establishing a common vision for negotiations, the parties at the Sto:Lo table re-engaged in substantive negotiations. The parties reaffirmed the tables' progress in December 2003 and continued to make progress until the end of July 2004, when internal governance issues in the Sto:Lo Nation stalled negotiations.

The Treaty Commission is currently engaged in a dialogue with the different political groupings to identify a basis for resumed negotiations.

Sto:Lo, a First Nation with approximately 3,600 members, traditionally occupied and used the land around the Fraser Valley, much of the Lower Mainland and the Harrison Lake watershed. The First Nation comprises 17 communities: Aitchelitx, Chawathil, Kwantlen, Kwaw-kwaw-Apilt, Lakahahmen, Matsqui, Popkum, Scowlitz, Seabird Island, Shxw'ow'hamel, Skawahlook, Skowkale, Soowahlie, Squiala, Sumas, Tzeachten and Yakweakwioose.

Te'Mexw Treaty Association

The parties continue to deal with the challenge of addressing the Te'Mexw member First Nations' historic Douglas Treaty interests within a modern treaty process. In doing so, the parties have taken a pragmatic approach to determine if a modern treaty package can capture the critical elements of the historic treaty. Through this approach, the parties have been able to make significant progress on key treaty chapters. However, as the parties have moved closer to an agreement in principle, the major issues become more urgent and clear. For the Te'Mexw First Nations, the availability of treaty settlement land, tax and fiscal arrangements, and fisheries fall within this category. Nevertheless, there is a reasonable probability that the parties will meet their objective of concluding agreement-in-principle negotiations within the next two years.

The Te'M'exw Treaty Association comprises five communities — Beecher Bay, Malahat, Nanoose, Songhees and Sooke — with a combined membership of approximately 1,260. The First Nation traditionally occupied and used land and water around the southern tip of Vancouver Island.

Tsawwassen First Nation

Parties to the Tsawwassen negotiations signed an agreement in principle in March 2004. The agreement includes 427 hectares of land plus existing reserve land of 290 hectares and $14.2 million, of which $10.1 million is the capital transfer.

Since then, intensive negotiations have continued towards reaching a final agreement. The parties are facing the challenge of resolving a number of key outstanding issues relating to governance, lands, fisheries, fiscal relations and taxation.

To help address some of these issues, several treaty related measures are being finalized or implemented. These relate to culture and heritage, intergovernmental relations, programs and services, lands and fisheries management. In addition, Tsawwassen will receive funding to support research related to existing reserve interests, such as certificates of possession.

The table also organized three intergovernmental technical workshops with representatives of the Greater Vancouver Regional District, corporation of Delta, and Tsawwassen First Nation, as well as the provincial and federal governments.

The First Nation of approximately 270 members traditionally occupied and used the land and water around Pitt Lake and the Fraser River Delta to Point Roberts and Saltspring Island.

Tsay Keh Dene Band

Since the joint land and cash offer from Canada and BC to Tsay Keh Dene in 2001, and their rejection of the offer, the parties have been making steady progress in building upon that framework. Specifically, over 2004 the parties have made progress on treaty chapter drafting in the following areas: wildlife and trapping, lands, land use, eligibility and enrolment and migratory birds. However, parallel to these negotiations Tsay Keh Dene is also engaged in substantive negotiations with BC Hydro on issues related to the creation of the Williston Lake dam. Although these negotiations have been happening away from the treaty table, the parties expect the resolution of the issue to pave the way for rapid movement towards an agreement in principle.

Tsay Keh Dene's traditional territory is located in the general vicinity of Williston Lake and reaches north to Mount Trace, west to South Pass Peak, south to the Nation River and east to Mount Laurier. The First Nation has approximately 320 members.

Tsimshian Nation

For much of 2004 the Tsimshian Nation communities have, with Treaty Commission assistance, been seeking to address significant internal governance and treaty funding issues. By spring 2004, two of the seven communities — Lax Kw'alaams Band Council/Allied Tsimshian Tribes, and the Kitkatla Nation — had decided to separate from the Tsimshian Nation, and the other five Tsimshian communities decided to withdraw from the central treaty coordination entity, the Tsimshian Tribal Council. The five communities have advised the Treaty Commission of their intention to pursue an amendment to the Tsimshian Nation statement of intent. Before the Treaty Commission will approve an amendment, the constituents of the five Tsimshian communities must demonstrate a mandate from their communities in support of such an amendment.

The First Nation's traditional territory spans the northwest coast, including Prince Rupert and Terrace.

Tsleil-Waututh Nation

The table has a comprehensive framework for negotiations and a work plan. However, current negotiations are focusing on land. The parties agree that without a good land selection it will be difficult, if not impossible, to conclude an agreement in principle. To this end, negotiators for Tsleil-Waututh will be collecting data and presenting their land interests in the Indian River valley.

Tsleil-Waututh traditionally occupied and used the land and waters around North Vancouver and the Lower Mainland. The First Nation has approximately 380 members.

Westbank First Nation

Westbank First Nation focused most of its efforts this year on a landmark self government agreement, which received royal assent on May 6, 2004. Westbank began bilateral self government negotiations with Canada in 1990, prior to the initiation of the BC treaty process, and signed a self-government agreement in principle in July 1998. The parties to the Westbank negotiations confirmed their commitment to treaty negotiations and expect to increase the pace of discussions once the self government agreement is in place.

Under the self government agreement, Westbank will assume jurisdiction for most matters now regulated under the *Indian Act*. The agreement provides Westbank with governance and land management powers critical to the management of the community and of economic development on reserve lands. The agreement provides for a Westbank constitution that will ensure the political and financial accountability of the Westbank government to its members, as well as a mechanism by which non-member residents on Westbank lands, and those who have interests on Westbank lands, may be represented. The *Canadian Charter of Rights and Freedoms* will apply to Westbank government. The agreement also sets out the relationship among federal, provincial and Westbank laws.

The integration of the self government agreement into the tripartite treaty negotiations has been identified as a major issue for the treaty table.

Located in the Kelowna area, Westbank has approximately 590 members.

Wet'suwet'en Nation

Negotiations at the Wet'suwet'en table were slow this year. Wet'suwet'en negotiators received a mandate from the chiefs in March 2004 to pursue an incremental treaty agreement (ITA). Since then, the table has developed a work plan with time frames. Components of the ITA will include wildlife, fisheries, forestry, revenue sharing and land and resources, including non-renewable resources.

In January 2004, the Wet'suwet'en signed a $240,000 treaty related measure with Canada and BC that supports phase II of the Wet'suwet'en Territorial Stewardship Planning (WTSP) process. The principle goal of the project is to support the Wet'suwet'en Hereditary Chiefs as stewards of the house territories, thereby facilitating meaningful progress towards sustainable futures for Wet'suwet'en communities. Once completed, the WTSP will provide a basis for more definitive resource management decision-making by the Wet'suwet'en.

Wet'suwet'en traditionally occupied and used the Bulkley River drainage area in northwest BC. The First Nation includes Hagwilget Village Council and Moricetown Band, and has approximately 2,450 members.

Winalagalis Treaty Group

Quatsino has rejoined the Winalagalis table and negotiations are moving forward, with a considerable amount of chapter work nearing completion. Kwakiutl has filed a writ in court regarding their Douglas Treaty rights and have been obliged, as a result of Canada's negotiate-or-litigate policy, to leave the Winalagalis table.

The member First Nations of the Winalagalis Treaty Group — Kwakiutl Nation, 'Namgis Nation, Da'naxda'xw Awaetlatla Nation, Gwa'Sala-'Nakwaxda'xw Nation, Quatsino First Nation and Tlatlasikwala Nation — traditionally occupied and used the land and water around the north end of Vancouver Island and the Knight Inlet area. The First Nation has approximately 3,000 members.

Yale First Nation

Negotiations with Yale First Nation continue at a rapid pace, and the table is on target for achieving an agreement in principle by fall 2004. Land, fisheries and governance continue to be important areas of focus at this table.

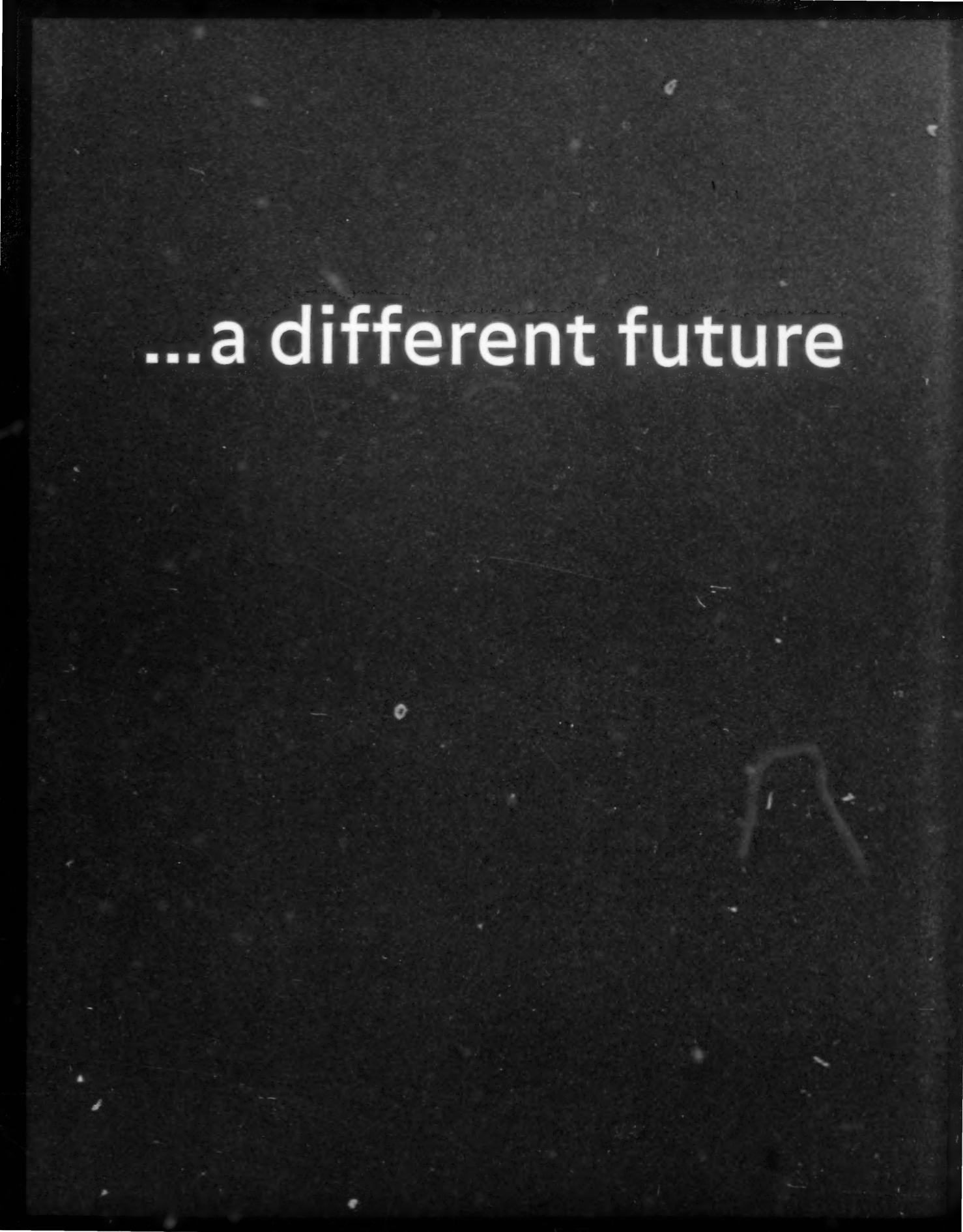
In July 2002 the Yale First Nation, British Columbia and Canada signed a memorandum of understanding implementing a land protection treaty related measure (TRM), setting aside 181 hectares of Crown land in the Hills Bar area for a future treaty settlement, while respecting existing tenures. The land protection TRM was extended in May 2004 for another two-year term. The Yale First Nation is currently exploring business opportunities with third parties on these lands.

Yale traditionally occupied and used the land around Yale, north of Hope. The First Nation has approximately 140 members.

Yekooche Nation

Yekooche is hoping to initial an agreement in principle by December 2004 or early 2005. The community is focusing on a community education/consultation plan to ensure its membership will be able to make an informed decision when the time comes to vote on the agreement in principle.

Yekooche, a First Nation with approximately 170 members, traditionally occupied and used the land and water around Fort St. James.


...a different future

What will it take...

The Task Force recommends that: "The First Nations, Canada, and British Columbia establish a new relationship based on mutual trust, respect, and understanding – through political negotiations."

In this special section, the Treaty Commission highlights the events of the past 10 years in the development of the new relationship among First Nations and others.

Then those directly involved in the negotiation of treaties provide their views on the new relationship being sought through treaties.

First Nations, through treaties, alliances with other governments and business, and aided by the courts, aim to secure their rightful place in British Columbia.

Court cases seeking to clarify the rights of aboriginal people have been, and continue to be, a strong motivating force for other governments and business to deal with First Nations. That was the impetus for the government of Canada to open a new chapter in treaty making in 1973.

The recognition of aboriginal title in the *Calder* case as a legal right was sufficient to cause the federal government to establish a comprehensive claims process. For First Nations in BC, however, disappointment quickly followed when it was learned the federal government would negotiate only one claim at a time. The Nisga'a Nation is the only beneficiary of that decision by the government of Canada.

Despite recognition of aboriginal rights in Canada's *Constitution Act, 1982* and a long trail of court decisions favouring First Nations, it was the political and economic realities in BC in the 1980s that finally prompted the BC government to consider negotiating with First Nations alongside the government of Canada.

While the fight for recognition of aboriginal rights continued its slow crawl through the courts, the majority of First Nations in BC and the governments of Canada and BC agreed to a made-in-BC treaty process to finally address the unfortunate situation facing many First Nations.

Held back by the restraints of the *Indian Act* and sidelined from the mainstream economy by a lack of financial capital, land or resources to carve out a future, for First Nations the prospect of a treaty process was welcome news.

First Nations and the governments of Canada and BC agreed to a task force to develop a process for negotiations. For the majority of First Nations, this was the first real opportunity to be heard. All of the Task Force's 19 recommendations for a made-in-BC treaty process were accepted. In accepting those recommendations then provincial Aboriginal Affairs Minister Andrew Petter said, "An important component of that new relationship is British Columbia's recognition of the political legitimacy of aboriginal title and the inherent right to self government."

A Treaty Commission was established and began accepting statements of intent to negotiate from First Nations on December 15, 1993.

Through the years 1994 to 1997, much of the focus was on process issues. There was less progress on substantive issues, although 27 First Nations did complete the steps necessary to be in Stage 4 where substantive negotiations were to take place.

Then on December 11, 1997 the Supreme Court of Canada decision in the *Delgamuukw* case brought the treaty process to a virtual standstill. Because the court clearly confirmed the existence of aboriginal title as a right to the land itself, all parties sought to re-examine their positions and decide whether to change their approach to negotiations.

When negotiations resumed, First Nations were buoyed by the Supreme Court decision, but ultimately disappointed with the response from the other governments.

Before the issues could be seriously addressed in negotiations, talks were effectively halted by other political developments. First, there was a federal election, then a period of uncertainty leading up to a provincial election, the provincial election campaign and the new government's settling-in period. This hiatus was extended when the provincial government opted for a provincial referendum on its mandate to negotiate. There were First Nations, too, that had to delay their participation in negotiations due to internal political issues.

In light of the delays and lack of progress in treaty negotiations, the Treaty Commission undertook a long overdue review of the treaty process in 2001. The recommendations from the review set in motion a series of high level talks over the following two years, during which all parties had the opportunity to discuss the substantive issues that are the subject of the negotiations. Working groups, representative of all parties, as well as experts, aided the participants in the high level talks to develop options and approaches that could be considered for use in individual negotiations. High level talks were then concluded in favour of test driving the proposed options at individual tables. Several tables began to make progress.

At much the same time there was another series of court decisions favouring First Nations. Two landmark rulings in the BC Court of Appeal confirm that the BC government must properly consult with and accommodate the interests of First Nations before proceeding with development on their traditional territories. The court also placed a new onus on industry to consult with and accommodate the interests of First Nations.

The BC government is consequently under increasing pressure to consult with, negotiate and accommodate First Nations. Many business and local government leaders have also stepped up their efforts to involve First Nations in their ventures.

There is a feeling among some First Nations that bringing their issues before the court will force the governments of Canada and BC to protect land, sea and resources within their traditional territories, because they do not believe their interests are being adequately addressed in treaty negotiations. They say there has not been sufficient recognition of their legitimate interests and their status as equal participants in the negotiations as was envisioned at the outset of the treaty process.

The parties are awaiting the outcome of the *Haida* case in the Supreme Court of Canada, which could further inform negotiations this fall.

The BC government, in its presentation to the court, points to treaty negotiation as offering the best opportunity for lasting reconciliation, even though it is a complex and lengthy process.

"How the relationship between aboriginal peoples and the Provincial Crown is managed in the interim will have a significant impact on the economic well being of the Province. Any test framed by this court ought to produce reasonable, practical solutions that continue to encourage the parties to negotiate."

The First Nations Summit told the court it agreed with the BC government that treaty negotiations offer the best opportunity for lasting reconciliation. However, "a recognition of the duty of the Province to consult with aboriginal peoples before aboriginal peoples are forced to go to court to prove their rights will encourage the aboriginal peoples to negotiate and does not shift the burden of proof."

At the treaty table, four First Nations are negotiating to conclude treaties over the next several months with the governments of Canada and BC. Some of the First Nations in advanced negotiations are negotiating together on governance issues, financial arrangements and taxation.

The new relationship the BC Claims Task Force set as the goal for treaty negotiations in 1991 is beginning to take shape for several First Nations. Recognition of First Nations is no longer a legal theory with no practical expression in the day-to-day lives of aboriginal people. Economic and political power is beginning to provide real opportunities for First Nations. In fact, First Nations with favourable geographic locations will be economic powerhouses, if they are not already major participants in the mainstream economy.

The greatest recognition, of course, will come through treaties. Through treaties, First Nations will have their land ownership recognized and constitutionally protected, and their governments empowered with significant authorities to initiate legislation, and administer programs and services, access revenues, borrow, receive transfers from other governments and levy taxes.

The land, cash and authority that will be transferred to First Nations through treaties are far from handouts or giveaways, as some people have suggested. These transfers come after a long history of marginalization for First Nations and should be regarded as acknowledgement and compensation, inadequate as they may be, for all that aboriginal people have endured and lost.

Two dominant views on the purpose of treaties emerged at the Treaty Commission conference, *Venturing into a Treaty World*, held earlier this year. The view of several First Nations people is that treaties should provide a sustainable future for aboriginal people in their traditional territories. The alternative view is that treaties should set First Nations on a path towards a sustainable future that would be developed over time.

Full participation in the mainstream economy was cited in both views as the way to a sustainable future. Good relationships among First Nations, federal, provincial, regional and local governments and business are seen as essential to economic development and completing treaties.

The views of others

Soowahlie Chief Doug Kelly, recently elected to the First Nations Summit executive, says the governments of Canada and BC want to cut a simple, straightforward real estate deal whereby First Nations surrender all of their title and rights for land and cash.

"In order to maintain confidence in the system, we have to produce results. When you are investing the kinds of funds that are being invested, there has to be some measurable progress and we haven't had it to date. The only way we are going to achieve measurable progress in this treaty negotiation process is when Canada and BC throw out this failing notion this is simply a real estate deal.

"That's not what we envisioned (when the treaty process was established)...Rather than a simple, straightforward real estate transaction, what we are talking about is sharing. How are we going to identify opportunities by which we share resources, revenue, power, land and all of the challenges associated with planning and managing resources and land?

"When you talk about sharing agreements, and you mean constitutionally protected sharing agreements called treaties, that gives you certainty...over how decisions will be made about future developments... it gives you certainty about how benefits will be shared ...and it's free of litigation.

"It's absolutely critical that we support those tables that are in agreement-in-principle negotiations today. Because whether we like it or not, the BC government and the federal government treat those agreements in principle as models for future treaty agreements. That's the cold hard reality. So the more support that we can offer those four or five tables that are in the midst of AiP negotiations right now, the more we can support them with reaching agreements on policy that will carry forward, the better for us.

"We need to be able to support one another to make certain that, yes, the deals need to be acceptable by those First Nations at that particular table but they also need to be acceptable to the tables that are following right behind them.

"It's not fair that Canada and British Columbia are saying these will be models for future agreements. And we know they will be. So, we have to work together. We have to advance proposals that make sense for everyone that is following. We have to support them."

Eric Denhoff, a federal chief negotiator, says a treaty is an attempt to rebalance power.

"Here in British Columbia, the two levels of government have had until now, by far the lion's share of the resources and virtually all of the authorities, and First Nations had little if any, of each. With the Treaty process and the jurisprudence that has evolved, there will be some measure of equality although there will always be an imbalance.

"Although rights and governance are important, of equal or possibly even greater importance, are the land holdings and financial resources that will accrue to the First Nations. These are the things that will enable First Nations to become major stakeholders in the economic future of the province. They will become true equity players and sit at the boardroom table with their non-aboriginal counterparts. This is where real equality will begin to play out and where the relationship will become meaningful.

"So on the one hand, First Nations will sit with the governments and address land use and legislative challenges, but they will also have influence in an economic way by taking their rightful place where economic decisions are the order of the day."

Council of the Haida Nation President Guujaaw, speaking at the Treaty Commission conference, said, "We're going into court, of course. We're quite willing to sit at the negotiating tables at the same time. We're quite willing to talk to business leaders as we go. We don't expect there's any one particular thing that's going to solve everything for us, but we're working through all these different components.

"Existing title, existing aboriginal rights...I believe that it could remain intact and complete over the full landscape and there could still be Crown title, there could still be business, and every race of people living together as there is today. And that's a proposal that we have in front of the federal and provincial negotiators right now and that's something we believe we could make work.

"...We went into court with Weyerhaeuser and the provincial government because as we sat talking about interim measures and they said, 'Everything's on the table.' The replacements of these licences, which have been on our land already for 25 years were going to be replaced for another 25 years. We said that's got to be there on the table; they said it will be, they'll talk about it. And then, in their wisdom, they decided that they would just replace it.

"That court case that we won has caused an interesting situation and it created an opportunity for between now and the point of us proving title, which we intend to do. For several reasons we intend to do this: one is that when we went into court on the tree farm licence case, the position of the Crown was quite telling and probably really pinpoints what is the problem with the treaty process. And their position is that unless you prove title they don't owe us any duty to consult or negotiate or do anything with us."

"...In that case they decided to replace that licence. We went in (to court), we lost one round...in our case we were able to show them that even in the public domain there's enough evidence of our title around that they should be behaving as if there is title. In that instance we established an encumbrance over all the licences in this province, and that's a pretty important thing to realize. In fact, the provincial government argued that while indeed they did say they could replace these licences over lands, which are not otherwise encumbered, certainly they meant encumbered by other things, not by us. We didn't really count in that equation. But the court said yes, that is a valid and real encumbrance.

Tsawwassen First Nation Chief Kim Baird has said a treaty is "not utopia with a bow on it.

"It's a toolbox, with some resources and money and jurisdiction to help us rebuild our community. It's going to take a treaty to give us the best set of tools to move beyond our current socio-economic conditions.

"I've also found that now that we are in more advanced discussions of treaty negotiations, there's a great deal of increased credibility; people view my community a little bit differently than they did a year ago. That's a positive benefit.

"I don't think we can get improved community conditions under the *Indian Act*. I don't think we can necessarily get it through litigating these issues. I think that negotiation is a practical way of advancing our interests as a community without losing our identity or without giving up anything."

Lheidli T'enneh Band Chief Barry Seymour has said there are several reasons why his community has selected to negotiate a treaty.

"First and foremost, we feel that it will clearly define our relationship with other governments. Secondly, it will provide us the tools to achieve our goals and objectives for our community members, now and into the future."

Lheidli T'enneh and the city of Prince George signed in 2002 a memorandum of understanding and communication to establish a new relationship where their mutual interests are given full expression and consideration.

Sliammon Indian Band Chief Maynard Harry has said, "A treaty is one tool among other tools for developing a community."

"Lots of opportunity has come via the treaty table. So the treaty table has been very instrumental in having the voice of the Sliammon people heard."

But Chief Harry also recognizes there are other tools available to the Sliammon people, for example, economic development and building relationships with local and regional governments.

Sliammon has formalized its relationship with both the corporation of the district of Powell River and the region's largest employer Norske Canada through protocol agreements that commit the parties to work together for mutual benefit.

Maa-nulth First Nations Chief Negotiator George Watts advises First Nations to "destroy the myth that treaty is going to be the be all and end all. It isn't...it is part of the answer. And it's a big part because it leads to a lot larger land base and it leads to governance... but there are a lot of other things that have to happen along with treaty and I would say that one of the biggest things is the education of our people.

"Develop your constitution and then everybody will have ownership of it. They will know exactly what their government is going to look like. They will know who is eligible to vote...all of those questions will be answered.

"At the end of the day, it's not the document, it's whether or not the community changes."

Minister Responsible for Treaty Negotiations Geoff Plant, in responding to Treaty Commission questions, said, "Treaty negotiations are about resolving a complex set of legal, historical and moral issues by creating new relationships founded on mutual respect and a shared commitment to reconciliation.

"The status quo is the uncertainty created by a history of failure — and in BC's case, a century of refusal — to address these important issues, especially the unsettled relationship between aboriginal rights and title and Crown rights and title. Negotiating treaties is about working towards agreements that will put that legacy of failure behind us.

"Treaties are a tool to help us move beyond the stalemate and uncertainty of litigation and threats of litigation, to a world of opportunity founded on certainty, respect and shared understanding.

"Final agreements will be the full and final settlement of aboriginal rights related to land and resources. From BC's perspective a primary element of the new relationship established in modern treaties is a clear statement of the rights and responsibilities of the parties with respect to land and resources — both ownership and decision-making rights. This is what the public expects by the goal of finality in treaty negotiations.

"In large measure, our ongoing relationship will be through multi-year implementation plans. Our relationship with First Nations will undoubtedly continue to evolve through this period.

"In addition to the important issues of land, resources and governance, one of our priorities is to work with First Nations on initiatives that recognize the historical and cultural presence of aboriginal people in this province and help us build better working relations.

"Intergovernmental relations are another key topic for BC. Through the treaty process, we are working to facilitate working relations between First Nations and local governments.

"The fundamental goal is for First Nations people and communities to participate as equals in the political, economic and social life of British Columbia.

"Our commitment has included a willingness to rethink approaches to some issues such as the legal technique of certainty, compensation, resource revenue sharing, and cooperative management, where the old approaches were creating obstacles to success.

"And now, for the first time in 12 years, we are in final agreement negotiations at four tables. This represents unprecedented progress compared to where we were when I took on this task three years ago. I'm hopeful we'll have final agreements under the BC Treaty Commission process in 2005."

Robert Morales, Hul'qumi'num chief negotiator, said the major reason the Hul'qumi'num Treaty Group has engaged in the treaty process is a resolution of the land question.

"What the elders are saying is that their ideal resolution would be that Hul'qumi'num would get 100 per cent of the land back. But because in this territory, there are so many small and large private landholders, that is not likely going to happen. And that's been a difficult message to give to the elders.

"So, a new relationship then I think is one that we have been saying, 'Well, if Hul'qumi'num doesn't get back a large part of their original territory, that we ought to be part of the decision-making process in the territory.'

"Co-management is really about joint decision-making — participation in the actual decisions. We've broken the concept of co-management into two categories: one is co-management and the other is cooperative management.

"What we've heard from the federal government is, 'Well, you can't fetter the discretion of the minister.' And we recognize that, in Canada, we are part of a federal state...we're not advocating for sovereignty and separation. We recognize that we still are going to be part of Canada; we're still going to be part of BC. But, there is the notion that just because the minister retains ultimate authority, doesn't mean that everyone underneath the minister also has ultimate authority. So, let's create opportunities for the Hul'qumi'num to be able to participate in a very active way, including the decision-making.

"The sea and the resources of the sea have always been an important part of the culture. And that was, of course, the rationale — used by the early administration, (Governor James) Douglas and others — for having such small reserves...that you would be able to harvest from the ocean.

"What we are pushing for is that Hul'qumi'num ought to have recognition of ownership of foreshore and seabeds.

"I believe there has to be sufficient land and resources to sustain an economy; in effect jumpstart an economy after the treaty is concluded.

In terms of a tool, I am sure that the treaty will provide jurisdictional opportunities and with jurisdiction, of course, will come further opportunities to create that kind of a vibrant economy.

"So, we see building a new relationship as involving the Hul'qumi'num people."

Hupacasath First Nation Chief Judith Sayers, speaking at the Treaty Commission conference, said, "A treaty was intended to provide us with lands, resources and money to ensure our future.

"I remember one time sitting at the treaty table and hearing the provincial negotiator say to me, 'We're not here to meet your needs, we're just here to give you a start.' And I was really shocked because I thought that's what we were there to do: to maintain a way of life, to provide a future for our children.

"Economic independence; two words, but they mean so much. We don't want to rely on transfers from the government. We want to be able to use the lands and resources as we always did to make our own way."

Elmer Derrick, chief negotiator, Gitxsan Hereditary Chiefs says, "The Crown forced Indian reserves on the Gitxsan and corralled people into small tracts of land where they became totally dependent on someone else for their wherewithal.

"The Crown conquered the Gitxsan by legislation and denied them access to their own resources by public policy that has shifted resource rights from local people to foreign corporations.

"The will to fight back has never gone away. The battlefield was leveled in 1982. *The Constitution Act, 1982* recognizes and affirms aboriginal and treaty rights. The Gitxsan played an instrumental role in getting that particular milestone.

"In 1984 the Gitxsan continued on the journey to correcting the imbalance in the relationship with the Crown by launching the *Delgamuukw* court case. The case went through three levels of the Queen's own court until the final word came down from the Supreme Court of Canada in December 1997.

"The final decision on *Delgamuukw* can be summarized as such: the Gitxsan have never ceded Gitxsan title to the Crown; the Gitxsan can be very Gitxsan within Canada and do not have to be Indians; the Gitxsan can decide to what uses their lands may be put; Gitxsan title has an inescapable economic component; and the pre-existence of the Gitxsan has to be reconciled with Crown title.

"The Gitxsan have continued on with the journey by engaging in reconciliation and treaty talks. The Crown continues to stall mostly because of ignorance.

"The learned justices in the Queen's own higher courts have charted a reasonable course that will enable the Gitxsan's pre-existence to be reconciled with Crown title. The path is clear and the hurdles are small.

"The Gitxsan have declared that they are willing to negotiate a new relationship that is not as burdensome on either party. The Gitxsan have stated that the courts do not suggest that Gitxsan title nor rights have to be forfeited to the Crown."

Derrick says the Gitxsan are close to an understanding with the BC government on a new relationship, particularly on forest issues, which are a major concern. He is also confident the Gitxsan will be able to come to an understanding on the allocation, management, protection and enhancement of salmon.

"We have no interest in enlarging reserves. What we do want is to co-manage our territories, and the resources within those territories, for the benefit of the Gitxsan and for the Crown, too."

...our three roles

About the Treaty Commission

The Treaty Commission is the independent and neutral body responsible for facilitating treaty negotiations among the governments of Canada, BC and First Nations in BC. The Treaty Commission does not negotiate treaties — that is done by the three parties at each negotiation table.

The Treaty Commission and the treaty process were established in 1992 by agreement of Canada, BC and the First Nations Summit. They are guided by the agreement and the 1991 *Report of the BC Claims Task Force*, which is the blueprint for the made-in-BC treaty process. The Treaty Commission and the six-stage treaty process were designed to advance negotiations and facilitate fair and durable treaties. The process is voluntary and open to all First Nations in BC.

As the independent keeper of the BC treaty process, the Treaty Commission carries out three complementary roles: facilitation, funding and public information and education.

Report on Facilitation

The Treaty Commission's primary role is to oversee the negotiation process and ensure that parties are being effective and making progress in negotiations. In carrying out this role, the Treaty Commission:

> Accepts First Nations into the treaty process and assesses when the parties are ready to commence negotiations;

> Monitors and reports on the progress of negotiations and encourages timely negotiations by helping the parties to establish meeting schedules and by monitoring deadlines;

> Offers advice and chairs key meetings at treaty tables, when requested;

> Assists the parties in developing solutions and in resolving disputes;

> Facilitates and coordinates high level talks among the Principals and helps to identify priority issues and opportunities; and,

> Develops policies and procedures for the six-stage treaty process.

The Treaty Commission continues to spend the greatest part of its time and resources on facilitation to move negotiations forward at a number of treaty tables (See, Our current status page 4, for the details).

Report on Funding

The Treaty Commission allocates negotiation support funding so that First Nations can prepare for and carry out negotiations on a more even footing with the governments of Canada and BC. For every $100 of negotiation support funding, $80 is a loan from Canada, $12 is contribution from Canada and $8 is a contribution from BC.

Since opening its doors in May 1993, the Treaty Commission has allocated approximately $289 million in negotiation support funding to more than 50 First Nations — $231 million in the form of loans and $58 million in the form of contributions.

Operating Budget

The Treaty Commission's operating budget for 2003–2004 was $2.11 million and its total operating costs from 1993 to March 31, 2004 are $22,147,000. In addition to the four part-time commissioners and the full-time chief commissioner, the Treaty Commission employs 13 staff. Funding for administering the treaty process and for settlement costs are borne jointly by the federal and provincial governments. The government of Canada contributes 60 per cent of the Treaty Commission's budget and the BC government contributes 40 per cent.

Report on Public Information and Education

As 'the independent voice of treaty making in British Columbia,' the Treaty Commission is uniquely positioned to analyze and demystify complex treaty issues. The governments of Canada and BC also share responsibility for public information. As well, the three parties in each set of negotiations — Canada, BC and First Nations — provide specific information on their negotiations.

Ongoing Communications Commitments

The governments of Canada and BC have funded the Treaty Commission to provide public information and education on treaty making in BC since 1997. To reach audiences throughout BC, the Treaty Commission produces a variety of communications tools, including a web site, annual report, newsletter, special publications, videos and television documentaries.

Commissioners regularly deliver presentations to special events, community forums, business organizations, schools and post-secondary institutions. In addition to providing up-to-date information on the current state of the treaty process, the Treaty Commission has an important role to play in supporting public information efforts by individual treaty tables. To assist with these efforts, commissioners and staff regularly attend information forums with First Nation constituents and with the broader non-aboriginal community.

Quarterly Reporting

The Treaty Commission has initiated quarterly reporting, producing three newsletters and an annual report each year. The newsletters and annual report are available on our website at www.bctreaty.net.

Economic benefits of treaties

The Treaty Commission made a commitment in 1997 to provide British Columbians with information on the historical, legal and economic reasons for treaty making. This year the Treaty Commission hosted BC business — along with governments, including First Nations — at a one-day conference in Vancouver in March to discuss the compelling economic case for treaty making. This is the fourth in a series of conferences addressing aspects of treaty making.

At *Venturing into a Treaty World*, leading economic thinkers offered their opinions on the Treaty Commission's own studies that confirm the absence of treaties in British Columbia is a major drain on the economy. The conference also asked First Nation and business leaders who have been successful in joint ventures to offer their insights on what it takes to get there. Various perspectives from that conference were captured in *Venturing into a Treaty World*. Copies are available at www.bctreaty.net, along with an economic study completed by Grant Thornton and surveys by the Mustel Group.

Research confirms benefits of treaties

The cost of treaty making is often a focus of attention, but it is the absence of treaties that is impacting BC's economy every day. Investment will be curtailed until agreements are in place with First Nations. Of course, the flip side of that is investment will flow when we have agreements.

Our survey of businesses confirms the impact is negative. In fact, 67 per cent of businesses cite unresolved First Nation land claims as important in investment decisions.

One in five companies reduced their investment in BC over the past five years because we don't have treaties. Six per cent of businesses reported a significant reduction in investment.

That adds up to hundreds of millions of dollars just among those companies surveyed. So, the lost investment opportunities are significant.

More importantly, one in four companies would increase investment if a significant number of treaties were settled. Eight per cent would increase investment significantly. Again, that adds up to hundreds of millions of dollars just among the companies surveyed.

Treaties will bring certainty to land ownership and jurisdiction. Treaties will bring a major cash injection and new investment to BC. We are reasonably confident now that land and cash transfers to First Nations will be important economic drivers in the future. We think the benefits to British Columbians over the longer term will be in the tens of billions of dollars.

Our research into, and conference on, the economic benefits of treaties earlier this year provide compelling reasons for concluding treaties sooner rather than later for the benefit of all British Columbians.

Talking Circles

In May 2004, the Treaty Commission launched its video *Our Sacred Strength: Talking Circles Among Aboriginal Women* at film events in Vancouver and Tofino. The launch marked the next step in the Treaty Commission's efforts to promote talking circles among aboriginal women.

The video is designed to reflect the many common concerns and challenges aboriginal women share in the pursuit of a better future, and is intended to engage more women in the treaty process. The video and a facilitation guide have been provided to aboriginal women across BC and the Yukon.

The Treaty Commission will continue to promote talking circles among aboriginal women in fall 2004, using the video as a catalyst for discussions. Events are planned for Campbell River, the Fraser Valley, Prince George and Terrace. The Talking Circles initiative was made possible through the financial support of Status of Women Canada and the BC Ministry of Community, Aboriginal and Women's Services and by a steering committee of aboriginal women, who guided the project.

Sharing the Experience

This year, the Treaty Commission cooperated with Indian and Northern Affairs Canada to produce the video *Sharing the Experience*. As the name implies, *Sharing the Experience* taps the insights and advice of five First Nation leaders who have reached significant milestones in treaty negotiations in BC — one that is implementing a treaty and four that have signed agreements in principle.

The 22-minute video features Nisga'a Lisims government President Joseph Gosnell, Lheldli T'enneh Chief Barry Seymour, Sliammon Chief Maynard Harry, Tsawwassen Chief Kim Baird, and Maa-nulth chief negotiator George Watts discussing their experiences at the negotiation table. The video is intended for First Nations seeking to learn from the experiences of others in the treaty process. Copies are available from Indian and Northern Affairs Canada.

Treaty Commissioners

The First Nations Summit members elect two commissioners and the federal and provincial governments appoint one each to serve two-year terms. The chief commissioner is appointed to a three-year term by agreement of the three Principals.

Wilf Adam was re-elected commissioner by the First Nations Summit in March 2003 to serve a fifth consecutive term. Former chief councillor of the Lake Babine Band and chair of the Burns Lake Native Development Corporation, Adam co-founded the Burns Lake Law Centre. He is a graduate of Business Management from the College of New Caledonia in Prince George.

Jack Weisgerber was re-appointed to the Treaty Commission by the government of British Columbia to a second term in February 2004. Weisgerber represented Peace River South in the BC legislature for 15 years from 1986 to 2001. He became BC's first minister of aboriginal affairs in 1988, and in 1991 he was appointed minister of energy, mines and petroleum resources. His leadership was a key factor in the formation of the BC Claims Task Force.

Jody Wilson was elected commissioner in March 2003 by the First Nations Summit. Raised in the Comox valley, Wilson is a member of the We Wai Kai First Nation of the Laich-Kwil-Tach K'omoks Tlowitsis Council of Chiefs. Prior to assuming this post, Wilson worked for nine months as a treaty advisor at the Treaty Commission and two years as a provincial Crown prosecutor. She holds a Bachelor of Laws from the University of British Columbia (1999) and a Bachelor of Arts in Political Science and History from the University of Victoria (1996). Wilson has been an active member of the BC Bar since 2000.

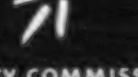
Michael Harcourt was appointed to the Treaty Commission by the government of Canada in May 2003. Harcourt served as British Columbia's Premier from 1991–1996, and as mayor of Vancouver for three terms from 1980 to 1986. His commitment to the treaty process is long-standing; as premier in 1992 he signed the agreement establishing the Treaty Commission. Harcourt currently serves as the honorary chair of the International Centre for Sustainable Cities and co-chair of the International Panel of Advisors, and as senior associate of the Liu Centre for the Studies of Global Issues at the University of British Columbia. He also works with the Rick Hansen Man in Motion Foundation on International Collaboration on Repair Discoveries (I-CORD) and chairs the Spinal Cord Injury Quality of Life Advisory Group. In December 2003, he was appointed by Prime Minister Paul Martin to chair an external advisory committee on cities and communities.

Departures

Miles Richardson resigned as chief commissioner in March 2004 to run as the Liberal Party's candidate in Skeena-Bulkley Valley during the recent federal election. Richardson served at the Treaty Commission for eight years, three as a commissioner elected by First Nations Summit members and five in the top post. He brought to both positions extensive experience in aboriginal rights issues, having been a member of the First Nations Summit Task Group and the BC Claims Task Force, whose report and recommendations are the blueprint for the treaty negotiation process in British Columbia. His energy and enthusiasm were key to moving treaty negotiations forward. In parting, Richardson said he would continue to be an advocate for treaty making as the most constructive and effective approach to resolving the title dispute in British Columbia.

www.bctreaty.net

For details on the six-stage treaty process
and recommended resources, see our website.



BC TREATY COMMISSION

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Merging past and present, the Treaty Commission symbol represents the three Principals in modern-day treaty making – the governments of Canada and British Columbia and First Nations. Pointing in an upward and forward direction, the symbol implies a "coming together" pivotal to successful negotiations and treaty making.